

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE SHANE GROUP INC.;
BRADLEY A. VENEBERG; SCOTT
STEELE; MICHIGAN REGIONAL
COUNCIL OF CARPENTERS
EMPLOYEE BENEFITS FUND;
ABATEMENT WORKERS
NATIONAL HEALTH AND
WELFARE FUND; and MONROE
PLUMBERS AND PIPEFITTERS
LOCAL 671 WELFARE FUND,

Case No. 2:10-cv-14360

Honorable Denise Page Hood

Plaintiffs,

v.

BLUE CROSS AND BLUE SHIELD
OF MICHIGAN,

Defendant.

**MOTION FOR LEAVE TO FILE RESPONSE TO DEFENDANT BLUE
CROSS BLUE SHIELD OF MICHIGAN'S MEMORANDUM IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT (ECF NO. 352) BY ADAC AUTOMOTIVE, ALMA
PRODUCTS COMPANY, BAKER COLLEGE, BORROUGHS
CORPORATION, EAGLE ALLOY INC., FISHER & COMPANY INC.,
FOUR WINDS CASINO RESORT, FRANKENMUTH BAVARIAN INN
INC., GEMINI GROUP INC., GILL-ROY'S HARDWARE/MORGAN
PROPERTIES LLC, GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS, HI-LEX CORPORATION, HUIZENGA GROUP,
KENT COMPANIES INC., LA BELLE MANAGEMENT INC., MASTER
AUTOMATIC MACHINE COMPANY INC., MORBARK INC.,
PETOSKEY PLASTICS INC., SAF-HOLLAND USA INC., STAR OF THE
WEST MILLING COMPANY, TARUS PRODUCTS INC., TERRYBERRY
COMPANY LLC, THELEN INC., TRILLIUM STAFFING SOLUTIONS,
TRUSS TECHNOLOGIES, AND WADE TRIM GROUP INC.**

The Objectors identified above request leave to file a response to Defendant's Memorandum in Support of Motion for Final Approval of Class Action Settlement (ECF No. 352, the "Memorandum"). The Objectors believe that Defendant's Memorandum contains a significant misrepresentation of the record that requires correction. The Objectors' proposed response is limited to addressing this misrepresentation.

A Brief in Support of this Motion is filed herewith and incorporated herein by reference. The Objectors' proposed response is less than three pages in length and is attached to the Objectors' brief as **Exhibit A**.

Pursuant to E.D. Mich LR 7.1(a), on October 29, 2018, the undersigned sought concurrence for this motion from Defendant's counsel. Defendant's counsel concurs with the Objectors being granted leave to file a response to Defendant's Memorandum.

Respectfully submitted,

VARNUM LLP
Counsel for Objectors

Dated: October 29, 2018

By: s/ Bryan R. Walters
Bryan R. Walters (P58050)
Business Address, Telephone, and E-Mail:
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000
brwalters@varnumlaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE SHANE GROUP INC.;
BRADLEY A. VENEBERG; SCOTT
STEELE; MICHIGAN REGIONAL
COUNCIL OF CARPENTERS
EMPLOYEE BENEFITS FUND;
ABATEMENT WORKERS
NATIONAL HEALTH AND
WELFARE FUND; and MONROE
PLUMBERS AND PIPEFITTERS
LOCAL 671 WELFARE FUND,

Case No. 2:10-cv-14360

Honorable Denise Page Hood

Plaintiffs,

v.

BLUE CROSS AND BLUE SHIELD
OF MICHIGAN,

Defendant.

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE RESPONSE TO
DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT (ECF NO. 352)
BY ADAC AUTOMOTIVE, ALMA PRODUCTS COMPANY, BAKER
COLLEGE, BORROUGHS CORPORATION, EAGLE ALLOY INC.,
FISHER & COMPANY INC., FOUR WINDS CASINO RESORT,
FRANKENMUTH BAVARIAN INN INC., GEMINI GROUP INC., GILL-
ROY'S HARDWARE/MORGAN PROPERTIES LLC, GRAND TRAVERSE
BAND OF OTTAWA AND CHIPPEWA INDIANS, HI-LEX
CORPORATION, HUIZENGA GROUP, KENT COMPANIES INC., LA
BELLE MANAGEMENT INC., MASTER AUTOMATIC MACHINE
COMPANY INC., MORBARK INC., PETOSKEY PLASTICS INC., SAF-
HOLLAND USA INC., STAR OF THE WEST MILLING COMPANY,
TARUS PRODUCTS INC., TERRYBERRY COMPANY LLC, THELEN
INC., TRILLIUM STAFFING SOLUTIONS, TRUSS TECHNOLOGIES,
AND WADE TRIM GROUP INC.**

In their Joint Objection to the proposed settlement (ECF No. 343), the Self-Insured Objectors referenced portions of an expert report prepared by Dr. Christopher Vellturo in Aetna's separate lawsuit against BCBSM. Defendant's Memorandum in Support of Motion for Final Approval of Class Action Settlement (ECF No. 352, the "Memorandum") stated that, in the *Aetna* case, this Court excluded the evidence cited by the Objectors – and therefore the Court should not consider these portions of Dr. Vellturo's report in assessing the fairness of the proposed settlement. BCBSM is flatly incorrect.

The Objectors seek leave to file a short response to Defendant's Memorandum for the limited purpose of addressing and correcting this misrepresentation. The Objectors' proposed response, which explains the misrepresentation in more detail, is attached to as **Exhibit A**.

It is within this Court's discretion to grant leave to litigants to file briefs which are not otherwise permitted under the Rules of Civil Procedure or the Local Rules. *See, e.g., Soc'y of St. Vincent De Paul in the Archdiocese of Detroit v. Am. Textile Recycling Servs.*, No. 13-CV-14004, 2014 WL 65230, at *3 (E.D. Mich. Jan. 8, 2014) (Hood, J.) ("The decision to grant or deny leave to file a sur-reply is committed to the sound discretion of the court.") (granting leave to file a sur-reply when reply brief made "brand new" allegations that "materially misstate[d] the facts").

Here, the Objectors seek to file a limited response to address a significant misrepresentation of the record that was raised for the first time in Defendant's Memorandum. Defendant concurs with the Objectors' request for leave to file a brief in response to Defendant's Memorandum. This Court should exercise its discretion to grant the Objectors leave to file a response brief in the form of the proposed response submitted as **Exhibit A**.

Respectfully submitted,

VARNUM LLP
Counsel for Objectors

Dated: October 29, 2018

By: s/ Bryan R. Walters
Bryan R. Walters (P58050)
Business Address, Telephone, and E-Mail:
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000
brwalters@varnumlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel of record. I also caused the foregoing paper to be served via e-mail to:

Christopher Andrews at caaloe@gmail.com

By: s/ Bryan R. Walters
Bryan R. Walters (P58050)
Business Address, Telephone, and E-Mail:
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000
brwalters@varnumlaw.com